

**PERSPEC PRIME (M) SDN BHD v. METRO TEGAS
DEVELOPMENT (M) SDN BHD**

HIGH COURT MALAYA, KUALA LUMPUR

ASMABI MOHAMAD J

[COMPANIES WINDING UP NO: D5-28-370-2008]

12 NOVEMBER 2014

COMPANY LAW: *Winding up – Liquidators – Sale of property agreement prior to winding up – Consideration for property deemed settled by way of contra payment – Developer wound up prior to completion of project – Revival of project by liquidator – Demand of purchase price by liquidator upon completion of project – Whether liquidator held property in trust for purchaser – Whether bona fide purchaser – Companies Act 1965, s. 223*

COMPANY LAW: *Winding up – Disposition of property – Application for validation order – Sale and purchase agreement – Developer wound up prior to completion of project – Whether sale and purchase agreement regulated by Schedule G of Housing Development (Control and Licensing) Regulations 1989 – Whether consideration towards purchase price should be deposited into separate housing development account – Whether there was clear violation of provisions of Regulations – Whether agreement illegal – Whether application for validation order allowed*

The applicant *vide* a sale and purchase agreement dated 6 November 2007 purchased a property which formed part of a housing development ('the said property') from the respondent company for the sum of RM238,600. The said sum of RM238,600 was deemed settled in full because the respondent company was indebted to the applicant in excess of RM500,000 for works done by the applicant in respect of a housing project known as Putra Perdana La Cottage consisting of 187 units of double storey houses ('the said project'). The property in question was one of the units in the said project. Both the respondent company and the applicant had agreed that the applicant was not expected to pay the progress payments towards the purchase of the said property but the consideration for the said property shall be by way of contra payment, which was deemed settled in full. However, before the development was completed, the respondent company was wound up. Pursuant to a court order, a liquidator was appointed to manage the affairs and assets of the respondent company. The liquidator revived the said project. On 28 August 2013, the liquidator had by a letter notified the applicant that the property had been fully completed and demanded payment of RM238,600. In response, the applicant informed the liquidator of the arrangement that had been entered with the respondent company prior to its winding up. The applicant also reiterated that full payment had been made towards the consideration of the said property as agreed by the parties to the agreement. The applicant further deposed that the agreement was entered into in good faith and it was a genuine transaction in order to assist the respondent company to partially complete the said project in the interest of

- A all the house buyers. The applicant then filed an application for a validation order *vide* encl. 55 and sought *inter alia* that the sale and purchase agreement for the said property for the total consideration of RM238,600 paid by the applicant and the subsequent transfer of the property be validated pursuant to s. 223 of the Companies Act 1965 ('the Act'). The liquidator, however,
- B opposed encl. 55 and contended *inter alia* that at the time the respondent company was wound up, the said project had not been fully constructed. Hence, the parties had entered into a statutory regulated agreement in the form of Sch. G Sale and Purchase Agreement (Land and Building) ('Sch. G') prescribed in the Housing Development (Control and Licensing) Regulations 1989 ('the 1989 Regulations'). Therefore, pursuant to reg. 4 of the Housing
- C Development (Housing Development Account) Regulations 1991 ('the 1991 Regulations') all consideration towards the purchase price must be deposited into an account known as Housing Development Account ('account'). As this was not done, the liquidator contended that there was clear violation of the provision of the regulations and argued that encl. 55 should be dismissed.
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Held (allowing encl. 55 with costs):

- (1) Generally, the courts would adopt a very strict approach in interpreting the provisions of statutes. However, in so far as the Housing Development (Control and Licensing) Act 1966 and Housing
- E Development (Control and Licensing) Regulations 1989 ('the HDA') was concerned, a strict approach by the courts may in some situations defeat the purpose for which the law was enacted which ultimately may result in the purchasers being adversely affected. (para 9)
- (2) Despite the agreement being illegal for breach of the provisions of the
- F HDA, the agreement was still enforceable as there was nothing illegal about the consideration or object of the agreement. The purpose for which the contract was entered into by the applicant and the respondent company, which had led to the agreement, was for the applicant to assist the respondent company to complete the construction of the said project
- G for the benefit of the other 186 purchasers. There was nothing illegal with the agreement. Hence, the liquidator's objection was without any justifiable ground. (para 9)
- (3) As the full purchase price had been paid, the respondent company was holding the said property on trust on behalf of the applicant. On its
- H liquidation, the liquidator who had stepped into the shoes of the respondent company was holding the said property on trust for the applicant. The respondent company was also in breach of the HDA to have entered into the said arrangement with the applicant. Having benefited from the arrangement, it was not equitable for the liquidator
- I who had stepped into the shoes of the respondent company to shield himself behind his own breach to deny the applicant of the property, which had been paid in full. (para 9)

- (4) It was the respondent company's obligation to deposit the said sums in the housing developer's account as envisaged under reg. 4 of the 1991 Regulations which the respondent company had failed to do so. Therefore, the applicant should not be faulted for the respondent company's non-compliance of the provision of reg. 4 of the 1991 Regulations. (para 9) A
- (5) The applicant was a *bona fide* purchaser for value against the liquidator's *mala fide* attitude in denying the applicant the property by hiding behind the shield of illegality for which the respondent company was privy. The interest of the applicant was above the liquidator as the HDA was enacted with the intention to protect the purchasers from being manipulated by the developers. Further, if the applicant's prayer was denied, the liquidator would be unjustly enriched. (para 9) B
- (6) Alternatively, the applicant also contended that he bought the property, which was allocated to the respondent company and not opened for sale to other purchasers. Therefore, the HDA would not apply to the facts of the case. The applicant had averred to this fact in his affidavit, which was not rebutted to by the liquidator. As the liquidator had not rebutted this fact, by way of his affidavit, the averment was deemed accepted by the liquidator. If it was the property of the respondent company that the applicant purchased, the HDA would not be applicable. (para 9) C
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Case(s) referred to:

- Energoprojek (M) Holdings v. PP* [1996] 4 CLJ 571 HC (*refd*)
- Kin Nam Development Sdn Bhd v. Khau Daw Yau* [1984] 1 CLJ 347; [1984] 1 CLJ (Rep) 181 FC (*refd*)
- Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997 FC (*refd*) F
- MK Retnam Holdings Sdn Bhd v. Bhagat Singh Surian Singh* [1985] 1 CLJ 520; [1985] CLJ (Rep) 199 SC (*refd*)
- Ng Hee Thoong & Anor v. Public Bank Bhd* [2000] 1 CLJ 503 CA (*refd*)
- Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd* [1999] 3 CLJ 577 CA (*refd*)
- Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd* [1985] 1 CLJ 541; [1985] CLJ (Rep) 266 FC (*refd*) G
- Wong Wee Kheong & Anor v. Daya Bersama Sdn Bhd & other Appeals* [2013] 3 CLJ 969 FC (*refd*)
- Yee Hock Lai & Anor v. Unity Performance Sdn Bhd & Anor* [2013] 1 LNS 486 CA (*refd*)

Legislation referred to:

- Companies Act 1965, ss. 67(1), 223 H
- Contracts Act 1950, s. 24
- Housing Development (Housing Development Account) Regulations 1991, reg. 4

Other source(s) referred to:

- Visu Sinnadurai, *Law of Contract*, 3rd edn, p 444 I
- For the applicant* - Francis Brigged; *M/s Francis Brigged & Co*
- For the respondent* - Anita Fern; *M/s Anita Fern*

Reported by Sandra Gabriel

A JUDGMENT

Asmabi Mohamad J:

Introduction

B [1] This was an application filed by one Ng Seong Tioh, Trading as Benar Utama Enterprise (“the applicant”) for a validation order pursuant to s. 223 of the Companies Act 1965 (encl. 55). *Vide* encl. 55 the applicant sought the following orders:

C (i) that the sale and purchase agreement dated 6 November 2007 between the respondent company (now in liquidation) and the applicant in respect of a sale of a property known as Lot 17127 measuring 3363 square feet held under Master Title H.S. (D) 2487 PT 6250 Mukim Dengkil, District of Sepang, Negeri Selangor and forming part of the housing development known as “Putra Perdana (La Cottage)” (“the property”) for the total consideration of RM238,600 paid by the applicant and subsequent transfer of the property be validated pursuant to s. 223 of the Companies Act 1965 (“the Act”); and

(ii) any order this court deems fit as well as costs.

[2] The grounds for encl. 55 were as follows:

E (i) the applicant had purchased the property from the respondent company for the sum of RM238,600. The said sum of RM238,600 was deemed settled in full because the respondent company was indebted to the applicant in excess of RM500,000 for works done by the applicant in respect of a housing project known as Putra Perdana La Cottage consisting of 187 units of double storey houses in Mukim Dengkil, District of Sepang, Selangor (“the project”). The property in question was one of the units in the said project;

F (ii) both the respondent company and the applicant had agreed that the applicant was not expected to pay the progress payments towards the purchase of the property but the consideration for the said property shall be by way of contra payment, which was deemed settled in full;

G (iii) however before the development was completed and on 25 November 2008 the respondent company was wound up. Pursuant to a court order dated 2 October 2009 one Jambulingam a/l Sethuraman Raki was appointed as the liquidator (“the liquidator”) for the respondent company to manage the affairs and assets of the respondent company;

H (iv) upon its liquidation the liquidator undertook the task to complete the project. Once the project was completed the liquidator then informed the applicant that the property had been fully completed and ready for delivery of vacant possession. The liquidator demanded the full purchase price of the property from the applicant despite the same had been paid in full; and

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(v) the applicant responded to the said letter and requested the liquidator to take into consideration the sum of monies already paid to the respondent company pursuant to an agreement entered into between the respondent company and the applicant prior to its liquidation. The liquidator then requested the applicant to obtain the validation order pursuant to s. 223 of the Act. A
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[3] Enclosure 55 was supported by the affidavit deposed by the applicant on 1 November 2013 (encl. 54) and further supported by his affidavit in reply affirmed on 19 December 2013 (encl. 57). The liquidator opposed encl. 55 *vide* his affidavit in reply affirmed on 12 December 2013 (encl. 56) and filed herein. C

[4] Enclosure 55 was fixed for hearing before me on 20 May 2014, 23 June 2014 and 14 July 2014 respectively. Upon perusal of the affidavits and the relevant submissions filed herein and upon hearing learned counsel for the applicant and the liquidator on 14 July 2014 this court allowed the prayers sought by the applicant with costs of RM2,500 to be paid by the liquidator to the applicant. D

[5] Aggrieved by the said decision the liquidator appealed to the Court of Appeal Malaysia against the whole of the said decision.

[6] For ease of reference, the applicant and the respondent in encl. 55 would be referred to as “the applicant” and “the liquidator” respectively. E

Brief Facts

[7] The brief facts leading to the application were as follows:

For the applicant F

- (i) pursuant to a letter of offer dated 6 November 2007, the applicant, a contractor trading under the name and style of Benar Utama Enterprise had entered into an agreement with the respondent company for the construction and completion of the project (see exh. “NST-2” of encl. 54). The contract sum was fixed at RM523,600; G
- (ii) on the same day the respondent company had proposed that the contract sum be paid partially (“the sum of RM238,600”) by the sale of the property which was one of the 187 units constructed under the project (see exh. “NST-3” of encl. 54). The offer was accepted by the applicant on the same day. The applicant then appointed himself as the nominee under the proposed sale and purchase agreement (“the agreement”) (see exh. “NST-4” of encl. 54); H
- (iii) the agreement was executed between the applicant and the respondent company on 6 November 2007 in respect of the property for the sum of RM238,600 (see exh. “NST-5” of encl. 54); I

- A (iv) the applicant then proceeded to perform his obligations under the contract from 6 November 2007 to 15 October 2010. A certificate of payment had been issued and certified by the architect for the project in the sum of RM286,160 (see exh. “NST-6” of encl. 54). The applicant had continued to perform his part of the obligations and the
- B total value of the contract sum was more than RM500,000;
- (v) the applicant had accepted the contra payment arrangement of part of the contract sum towards the full purchase of the property. However, at the time of the winding up the project was still not completed;
- C (vi) upon its liquidation and pursuant to the appointment of the liquidator, the liquidator had obtained the court order to revive the project (see exh. “NST-7” of encl. 54). On 28 August 2013, the liquidator had by a letter notified the applicant that the property had been fully completed and demanded payment of RM238,600 in full (see exh. “NST-8” of encl. 54);
- D (vii) the applicant had by way of his solicitor’s letter dated 20 September 2013 informed the liquidator of the arrangement he had entered with the respondent company prior to its winding up. *Vide* the same letter he had also reiterated that he had fully settled the purchase price to the
- E respondent company by way of contra payment for works already done by him pursuant to a contract entered into between applicant and the respondent company (see exh. “NST-9” of encl. 54);
- (viii) the applicant deposed that the agreement was entered into in good faith and it was a genuine transaction in order to assist the respondent
- F company to partially complete the project in the interest of all the house buyers. The agreement was executed prior to the winding up but the project was completed after the same was revived by the liquidator. Full payment had been made towards the consideration of the said property as agreed by the parties to the agreement;
- G (ix) in addition to that, the applicant contended that the said property was not opened for sale to the house buyers but the same had been allocated to the developer and it was the developer’s unit that was sold to him;
- (x) until the letter dated 28 August 2013 the liquidator had never demanded payment of deposit from the applicant. The arrangement
- H made between the applicant and the respondent company was within the full knowledge of the liquidator. Prior to the issuance of the letter dated 28 August 2013 the liquidator did not dispute the applicant’s right to the property and or the validity of the agreement executed prior to the winding up of the respondent company;
- I (xi) *vide* his letter dated 1 October 2013 (exh. “NST-9” of encl. 54) liquidator had directed the applicant to apply for a validation order from the court; and

- (xii) in view of the aforesaid, the applicant contended that he was entitled to the prayers sought *vide* encl. 55. A

For The Respondent (The Liquidator)

[8] The respondent objected to the application for the following reasons:

- (i) at the time the respondent company was wound up the said project had not been fully constructed. Hence parties had entered into a statutory regulated agreement in the form of Sch. G - Sale and Purchase Agreement (Land and Building) prescribed ("Sch. G") in the Housing Development (Control and Licensing) Regulations 1989 ("the regulations"). Pursuant to reg. 4 of Housing Development (Housing Development Account) Regulations 1991 ("1991 Regulations") which provided that all consideration towards the purchase price must be deposited into an account known as Housing Development Account ("account"). In the case before this court this was not done. Therefore, there was clear violation of the provision of the regulations; B C D
- (ii) the liquidator had obtained the order from the court to rehabilitate the project and managed to complete the said project (see exh. "NST-7" of encl. 54). Pursuant to the order of the court dated 29 March 2010 the liquidator had served the notice in respect the progress payment for the said property payable by the applicant under the third schedule of the agreement to be settled by the applicant within twenty eight (28) days from the date of the invoice before the property could be delivered to the applicant. The applicant had refused and or neglected to abide by the said notice. Therefore, the applicant had breached cl. 10(1)(b) of the agreement; E F
- (iii) this had caused the liquidator to issue a final notice dated 26 September 2013 to the applicant for the applicant to make payment within fourteen (14) days from the date of the final notice, failing which the liquidator was entitled to treat the agreement having been repudiated and terminated (exh. "NST-9" of encl. 54). As there was no payment made and the Court Order dated 29 March 2010 had not been adhered to the liquidator terminated the agreement; G
- (iv) the liquidator has no power or liberty to accept other modes of payment other than the mode prescribed under the 1991 regulations. In view of the above, the liquidator had requested the applicant to apply for a validation order from this court; and H
- (v) it was the liquidator's contention that any alteration and modification of the mode of payment not provided under the regulations shall be referred to the relevant authority for approval. In view of the aforesaid the liquidator urged this court to dismiss encl. 55 with costs. I

A Findings Of The Court

[9] Upon perusal of the relevant cause papers and the written submissions had filed herein and upon hearing submissions by both learned counsel for the applicant and the liquidator the following were the reasons for my decision dated 14 July 2014:

- B (i) pursuant to the liquidator's affidavit filed in opposition to encl. 55, it would appear that the liquidator was objecting to the validity of the agreement entered into between the applicant and the respondent company prior to the winding up of the respondent company. It was the liquidator's contention that the transaction entered into had violated the regulations and thus unenforceable. That was why the liquidator had issued a notice *vide* a letter dated 26 September 2013 for the applicant to pay the full purchase price before delivery of vacant possession of the property;
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- D (ii) prior to the issuance of the letter dated 26 September 2013 the liquidator had not disputed the applicant's right to the property. Further his records would disclose the existence of the agreement entered into between the applicant and the respondent company prior to the respondent company's liquidation. The fact that the full purchase price had been paid *via* contra payment for services rendered by the applicant to construct the project in the interest of all the purchasers was also within the knowledge of the liquidator;
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- F (iii) in resolving the above issue reference is made to the book the *Law of Contract* (3rd edn.) by Visu Sinnadurai at p. 444, where the Learned author had expressed that generally the courts would adopt a very strict approach in interpreting the provisions of the statutes and held that the agreements which violated the clear provisions of these statutes as illegal and or unenforceable. However in so far as the Housing Development (Control and Licensing) Act 1966 and Housing Development (Control and Licensing) Regulations 1989 ("the HDA")
- G are concerned, the learned author had stated that a strict approach by the courts may in some situations defeat the purpose for which the law was enacted which ultimately may result in the purchasers being adversely affected. The learned author had dedicated a section in the book to discuss the topic on the effects of the agreements, which
- H violated the HDA;
- (iv) the learned author stated as follows:
- I Therefore, in construing the legislation, the courts have borne in mind the interest of a class of persons whom the legislation purports to protect, that is, the purchasers of the houses. A strict interpretation of any prohibition contained in the legislation such that the contract be held to be unenforceable, may result in the purchasers being affected adversely, that is to

say, the purchasers not being able to obtain the houses that they had intended to purchase: see for example the novel approach adopted by the Supreme Court to avoid such an outcome in *Beca (Malaysia) Sdn Bhd v. Tan Chong Kuang & Anor*.

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It is in attempting to achieve a just compromise between the purchasers' interest, on the one hand, and the application of the general principles of law that the courts would not condone or give effect to the contract which contravenes a statute, on the other hand, that the courts face many difficulties. Fortunately, the Malaysian courts appear to have adopted the right approach. A survey of the cases indicate that in this area of the law, the courts have been fully conscious of the intention of the legislature to protect the purchasers: see for example the decisions of the Supreme Court in *MK Retnam Holdings Sdn Bhd v. Bhagat Singh* and in *Rasiah Munusamy v. Lim Tai & Sons Sdn Bhd*.

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- (v) the approach of the Malaysian courts were transmitted in cases such as *Kin Nam Development Sdn Bhd v. Khau Daw Yau* [1984] 1 CLJ 347; [1984] 1 CLJ (Rep) 181, *Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd* [1985] 1 CLJ 541; [1985] CLJ (Rep) 266, *MK Retnam Holdings Sdn Bhd v. Bhagat Singh Surian Singh* [1985] 1 CLJ 520; [1985] CLJ (Rep) 199 respectively;

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- (vi) in *Kin Nam Development v. Khau Daw Yau (supra)* the Federal Court held that despite the agreement being illegal for breach of the provisions of the HDA the agreement was still enforceable as there was nothing illegal about the consideration or object of the contract for the sale and purchase of houses. In enforcing the agreement, the court took into account that there was nothing illegal about the consideration and or the object of the agreement. His Lordship Salleh Abas CJ in delivering the judgment of the Federal Court stated as follows:

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In any case there is nothing illegal about the consideration or the object of the contracts because they are only contract for the sale and purchase of houses, and neither do they come within any of the paragraphs of s. 24 quoted above, although the appellant may well be guilty of an offence under r. 17 for contravening r. 11(1) of the Housing Developers (Control & Licensing) Rules 1970. In other words, these Rules do not affect the validity or otherwise of the contracts which the developer has signed with the purchasers.

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- (vii) In *Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd (supra)* despite the fact that there was noncompliance with the HDA the Federal Court took into consideration the purpose for which the law was enacted, in this case, for the protection of certain categories of persons. Despite the fact that there was clear violation of the HDA, the Federal Court held

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- A that the purchaser was entitled for specific performance of the oral contract so long as he was a *bona fide* purchaser. In delivering the judgment of the Federal Court His Lordship Mohd Azmi FJ held as follows:
- B ... Although the oral agreement does not comply with the provision of r. 12 (1), the purchaser clearly belongs to a class for whose protection the statutory prohibition is imposed and as such the purchaser can enforce his right for specific performance of the oral contract for sale provided he is a *bona fide* purchaser.
- C (viii) in *Yee Hock Lai & Anor v. Unity Performance Sdn Bhd & Anor* [2013] 1 LNS 486 where there was breach of HDA, in that, the purchasers did not pay 10% deposit to the developers which was required under the schedules to the HDA but had only paid RM500 with the concurrence of the developer. Subsequently the developer had
- D terminated the agreement on the ground that the 10% deposit had not been paid. The Court of Appeal had held that despite the noncompliance of the HDA, the court could still treat the sale and purchase agreement valid if there was presence of element of *mala fide* on the part of the developer;
- E (ix) in *MK Retnam Holdings Sdn Bhd v. Bhagat Singh Surian Singh* [1985] 1 CLJ 520; [1985] CLJ (Rep) 199 the Supreme Court had viewed that the Housing Developers Act and or Rules aimed at protecting the house buyers. HDA is also a piece of social legislation to protect house buyers and their relationships with the housing developers (see
- F the case of *Energoprojek (M) Holdings v. PP* [1996] 4 CLJ 571). In *Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997 where the agreement entered into was in violation of the s. 67(1) of the Companies Act 1965 Federal Court held that despite this violation the agreement was enforceable as the said section was not only for the protection of the company but also its creditors. Therefore, it created
- G an exception to s. 24 of the Contracts Act 1950;
- (x) guided by the above principles and the purpose for which the contract was entered into by the applicant and the respondent company, which had led to the agreement, was for the applicant to assist the
- H respondent company to complete the construction of the project for the benefit of the other 186 purchasers, I am of the view that there was nothing illegal with the agreement. Hence, the liquidator's objection was without any justifiable ground;
- I (xi) I am of the view that as the full purchase price had been paid, the respondent company was holding the said property on trust on behalf of the applicant and on its liquidation, the liquidator who had stepped into the shoes of the respondent company was holding the said property on trust for the applicant;

- (xii) it would appear from the facts adduced before me, the respondent company was also in breach of the HDA to have entered into the said arrangement with the applicant. Having benefited from the arrangement I am of the view that it is not equitable for the liquidator who had stepped into the shoes of the respondent company to shield himself behind his own breach to deny the applicant of the property, which had been paid in full. (see *Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd* [1999] 3 CLJ 577; [1999] 3 MLJ 489);
- (xiii) further, the applicant could not be faulted in this case because it was the respondent company's obligation to deposit the said sums in the Housing Developer's Account as envisaged under the r. 4 of the 1991 regulations. In this case, the respondent company had failed to do so. Therefore the applicant should not be faulted the respondent company's non-compliance of the provision of r. 4 of the 1991 regulations;
- (xiv) therefore, it is inequitable for the liquidator to deny the applicant's right to the property as he had paid the price of the property in full. In my evaluation of the facts before me from the perspective of valid consideration and object of the agreement and the fact that the applicant was a *bona fide* purchaser for value against the liquidator's *mala fide* attitude in denying the applicant the property by hiding behind the shield of illegality for which the respondent company was privy, I am mindful to grant the applicant the prayers sought *vide* encl. 55. I am guided by the principles enunciated by the Apex Courts to put the interest of the applicant above the liquidator as the HDA was enacted with the intention to protect the purchasers from being manipulated by the developers. Further, if I denied the applicant the prayer sought the liquidator would be unjustly enriched;
- (xv) upon perusal, the order dated 29 March 2010 (exh. "NST-7" of encl. 54), I am of the view that it is within the spirit of that order that the property be delivered and transferred to the applicant;
- (xvi) in view of the above, this court was mindful to grant the validation order sought by the applicant. My finding is supported by the case of *Wong Wee Kheong & Anor v. Daya Bersama Sdn Bhd & Other Appeals* [2013] 3 CLJ 969 where the Federal Court had ruled that once the company had been wound up, only the liquidator can dispose the property of the company pursuant to s. 223 of the Companies Act 1965 which provides as follows:
- Any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

- A (xvii) it was ruled by the Federal Court that s. 223 of the Act does not prescribe the time limit within which the validation order could be made. The Federal Court went further to rule that s. 223 of the Act does not shut out *bona fide* transactions. Hence, this court is vested with the power to grant the prayers sought by the applicant; and
- B (xviii) alternatively, it was also the contention of the applicant that he bought the property, which was allocated to the respondent company and not opened for sale to other purchasers. Therefore, the HDA would not apply to the facts of the case. The applicant had averred this fact in his affidavit, which was not rebutted to by the liquidator.
- C As the liquidator had not rebutted this fact, by way of his affidavit and pursuant to the principle laid down in *Ng Hee Thoong & Anor v. Public Bank Bhd* [2000] 1 CLJ 503; [1995] 1 MLJ 281 this averment was deemed to have been accepted by the liquidator. If it was the property of the respondent company that the applicant purchased, the HDA would not be applicable.
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Conclusion

- [10] Having considered the application and all the affidavits filed herein and the submissions by respective counsel from both sides and having given the matter a very careful and serious consideration, I am of the view, that
- E the applicant was entitled to the prayers sought. Accordingly I allowed the prayers sought *vide* encl. 55 with cost of RM2,500 to be paid by the liquidator to the applicant.

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